87-1345

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

JON G. LEAVELLE,
Appellant,

v.

STATE OF CALIFORNIA,
Appellee.

On Appeal from the
Supreme Court of the State of California

JURISDICTIONAL STATEMENT

JON G. LEAVELLE
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(805) 242-1595 Appellant in pro per

JOHN VAN DE KAMP
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(213) 736-2304 Attorney for Appellee

QUESTIONS PRESENTED

1) Have the citizens known in the Preamble of the United States Constitution as "We the people" and their "posterity" retained their full rights and recognition since the adoption of the Thirteenth, Fourteenth, and Fifteenth Amendments?

2) Has the class of citizenship known in the Preamble of the United States Constitution as "We the people" and their "posterity", since the adoption of the Fourteenth Amendment, become extinct?

3) If appellant is a citizen as recognized by the Preamble of the United States Constitution and is made subject to statutory law pursuant to the Fourteenth Amendment by the State of California, is the state violating appellant's inherent rights?

4) Can the State of California enforce statutory law pursuant to the Fourteenth

Amendment, on one whose citizenship is recognized by the Preamble of the United States Constitution without exceeding constitutional limitations.

5) Can Congress and the several State Legislatures usurp unto themselves the authority to amend the Constitution when that amendment results, or will result, in an expansion of the legislative power? Can the Amendment process under Article V, which was intended solely for purposes of adding "further declaratory and restrictive clauses" (as evidenced by the first twelve amendments), become the vehicle utilized by Congress for expansion of its power; the end result being the overthrow of the original Constitution and the form of government ordained and established by "We the people" as declared in the Preamble? Can Congress, by usurpation of Article V, empower itself to create

citizens of its own and by that means purport to add another entity to the political body? Can Congress then use that act of creation as a means of displacing and destroying the soverign and political body ordained and established by the original Constitution? and impose its citizens upon the states?

6) Appellant presents the question of whether the original Constitution and the Bill of Rights are perpetual. If so, then can any statutory fiction or pretext serve to suppress or destroy the citizenship intended by that Constitution? Are the several State Constitutions, having been altered to delete "free white" and bring them into compliance with the purported Fourteenth Amendment, now repugnant to the Constitution for the United States of America (1787)? Are the State Constitutions in violation of both the Preamble and

Article IV, Section 4? Can that situation hinder or prevent the appellant from asserting the fact of his race and claiming the natural citizenship appropriate thereto (and implications thereof) embodied in the Preamble and protected by the 9th Article of the Bill of Rights (1791)?

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GROUNDS FOR INVOKING JURISDICTION

Nature of Proceeding

This case involves the California Franchise Tax Board, wherein appellant, Jon G. Leavelle, was assessed for taxes. Upon appellants objections to proposed assessments he was given the ultimatum of appealing to the California Board of Equalization. Because of the questions of jurisdiction and constitutional matters involved appellant chose to file proceedings in the Court of Appeal to obtain appellate jurisdiction as required by the state constitution.

Date of Judgment to be Reviewed

The Supreme Court of California denied review of the judgment of the California Court of Appeal filed Oct. 5, 1987 (App-1), by its order dated Nov. 10, 1987 (App-3). The California Court of Appeal had denied the appellants petition for an original proceeding in mandamus(App-1).

Date of Order on Rehearing

A rehearing was not an option in this instance, per Cal. Rules of Court, Rule 27(a).

Date of Notice of Appeal

The original Notice of Appeal to the United States Supreme Court was filed in the California Court of Appeal on Feb. 5, 1988 (App-4).

Statutory Provisions

Appellant depends upon 28 USC §1257(2) to invoke jurisdiction of the United States Supreme Court as provided in Article III of the United States Constitution.

28 USC § 1257(2) provides:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as folows:
> "(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of it being repugnant to the Constitution * * * of the United States, and the decision is in favor of its validity." 28 USC 1257

In this case, the decision of the Supreme Court of California refusing to review judgment of the California Court of Appeal is final, although a "decision could be had". The California Supreme Court allowed the same to stand, in effect showing their assent to that judgment.

CONSTITUTIONAL PROVISIONS INVOLVED

In this appeal appellant questions whether or not the State of California can enforce statutory law pursuant to the Fourteenth Amendment upon one whose citizenship does not eminate therefrom.

Appellant contends that his citizenship is recognized by the Preamble of the United States Constitution in contradistinction to citizenship (or subject) created by Fourteenth Amendment. Appellant further contends that under the former (Preamble Citizenship) the United States Congress exercises "limited legislation". Whereas under the latter (Fourteenth Amendment Citizenship) Congress exercises "exclusive legislation". It also appears that the State of California via "long arm jurisdiction" exercises similar legislative power pursuant to the Fourteenth Amendment.

The State of California up to this

point refuses to take recognition of appellant's class of (Preamble) citizenship.

What may be considered constitutional under the Fourteenth Amendment may not be considered constitutional under the Fourth Amendment. Whereas under the Fourteenth Amendment Congress exercises "exclusive legislation" and under the Fourth Amendment Congress exercises "limited legislation".

In the matter of challenging the jurisdiction of the statutory laws, as pertaining to this case in the State of California, appellant does not claim to be a citizen of another state, territory, or venue. What the appellant is challenging is that the laws and or agencies created pursuant to the Fourteenth Amendment are under a seperate and distinct jurisdiction which falls under the "expanded powers" of the Congress

of the United States.

Appellant claims that his citizenship is recognized by the Preamble of the Original United States Constitution (1787) and the Preamble of the Original Constitution of the State of California. Therefore, appellant, as one of "We the people", is not a person whose citizenship was created by the Fourteenth Amendment. And as appellant does not seek, nor is he bound to the "due process" or "equal protection" clauses of the Fourteenth Amendment, he cannot be subject to any laws of the State of California made pursuant to the Fourteenth Amendment.

Although, in a general sense, appellant would be considered as one who is within the jurisdiction of the State of California, appellant cannot be subject to any state laws made pursuant to the Fourteenth Amendment merely by his presence in that state.

Appellant contends that the laws being imposed upon him were enacted under legislative power which was expanded by the Thirteenth Amendment and subsequent amendments, far beyond the original intent of the Framers.

Appellant contends also that the enforcement of such laws are abusive to his absolute rights as guaranteed by the Bill of Rights (1791) and the Constitution of the State of California (1849). Furthermore, appellant cannot comply with state laws as mentioned above without voluntarily waiving his God-given rights at Article IV of the Bill of Rights (1791) and Article I, Section 19 of the Original Constitution of the State of California (1849). It appears that appellant by compulsory methods, threats, etc., is being penalized for not complying, by waiving said rights, which is an outright abuse of

government.

If the laws in question were enacted by authority of the Fourteenth Amendment and appellant is an individual whose citizenship remains as it did before the adoption of the Fourteenth Amendment, then appellant owes nothing thereto and cannot be subject to the powers exercised to regulate Fourteenth Amendment citizens.

Appellant contends that he is not a Fourteenth Amendment citizen by race, contract, boon, benefit, or franchise, neither is there any evidence of willful acquiescence or implied consent.

Respondent does not appear to want to recognize that there are two distinct classes of citizenship. That which is recognized under the Preambles of both U.S. and State Constitutions and that which was created by the Fourteenth Amendment.

As can be seen from 28 USC § 1257(2) the Congress of the United States has placed no limitation on the appellate jurisdiction of the United States Supreme Court in respect to the aforementioned constitutional questions, and this court is free to exercise jurisdiction conferred by the following provisions of the United States Constitution:

> "The judicial power of the United States shall be vested in one Supreme Court * * *." Art. III § 1, U.S. Const.
>
> "The judicial power shall extend to all cases, in law and equity, arising under this constitution, * * *." Art. III § 2 cl 1, U.S. Const.
>
> "* * * In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make." Art. III § 2 cl 2, U.S. Const.

Where one state statute, or several state statutes enforced or operating in conjunction, violate the prohibitions of the United States Constitution the supremacy clause makes the law of the state and

judgments made thereunder void.

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land: and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Art. VI, cl 2, U.S. Const.

The Tenth Amendment makes reference to power retained by the people themselves and will have relation to the California constitution with respect to powers given the government of California by its citizens and those powers (rights) retained by the citizens of California (in Article I, California Constitution). Appellant possesses these secured rights as one of "the people respectively".

It is specifically noted that this appeal is outside the purview of the Thirteenth and subsequent Amendments. Appellant is not a citizen as contemplated by the Fourteenth Amendment.

Appellant claims absolutely no protections from the Thirteenth and subsequent Amendments, and furthermore appellant totally and completely disclaims any contention that might arise alleging that provisions of the Thirteenth and subsequent Amendments are a basis for appellate jurisdiction in the instant appeal, or a basis of adjudication of the instant appeal.

The basis of appellate jurisdiction in the instant case is strictly according to the aforementioned provisions of the original United States Constitution (1787) and according to its Bill of Rights (1791) where applicable through the original United States Constitution and its Preamble.

As will be seen from the statement of the case appellant's citizenship is a matter of natural right, evidenced by the Preamble of the United States

Constitution and the Constitution of California and appellant owes absolutely nothing to the Fourteenth Amendment the privileged citizenship it offers to those contemplated thereby. Van Valkenburg v. Brown, 43 Cal. 43, 47 (1872).

This disclaimer of the Thirteenth and subsequent Amendments is made by appellant to make clear appellant's intention to completely exclude their provisions from having any effect on this appeal, the same being absolutely and constitutionally inapplicable to appellant and the instant appeal.

See App-8 for the text of the constitutional provisions referred to in this section.

STATEMENT OF THE CASE

The appellant, Jon G. Leavelle, brought action against the California Franchise Tax Board by filing for a petition for a Writ of Mandate in the California Court of Appeals. The petition was filed Sept. 14, 1987.

The appellant included numerous affidavits (as exhibits) asserting the pertinent and relevant facts of race and contract (or lack thereof) bearing on 1) the liability for the tax in question and 2) the jurisdiction of the statutes pursuant thereof (i.e. whether the statutes were enacted under legislative power via the Thirteenth and subsequent Amendments).

It should be noted that the standing alleged by appellant to make affirmative constitutional arguments was never contested by the Court of Appeal.

Appellant raised the questions herein presented, in the California Court of

Appeal, by the following questions presented in appellant's petition to the California Court of Appeal:

> 1) Does petitioner possess, and is petitioner capable of claiming, state citizenship as set forth in the original California Constitution (1850)?
>
> 2) Is petitioner, being a free white California citizen, having revoked all contractual obligations with the state and federal governments, a citizen within purview of the Fourteenth Amendment to the Federal Constitution?

In the Court of Appeal order (App-1) denying petition the Court stated:

> "Judicial review of tax liability prior to payment is not available. (Jillson v. Board of Supervisors (1963) 221 Cal. App. 2d 192, 196.) Because a taxpayer who objects to or seeks a reduction in the assessment of property has a plain, speedy, and adequate remedy at law, mandate does not lie. (Id., at pp. 193-195)"

However, a study of the case cited above reveals that it involved the Fourteenth Amendment to the United States Constitution showing that the "due process" and the "plain, speedy, and adequate remedy" is

other than that as provided by the common law for the "We the people" under the Preambles of both the State and Federal Constitutions.

Appellant would also like to point out that all "remedies at law " prescribed, in the instant case, by the State of California begin with waiving one or more of appellants quaranteed rights which would seem to indicate that these laws and or remedies at law were enacted to regulate citizens created by the Fourteenth Amendment.

WHY QUESTIONS PRESENTED ARE SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION

Appellant requests that the appeal be heard with briefs from the respective parties. The Personal Income Tax Act of California, when imposed upon one (as in appellant's case) whose citizenship is recognized by the Preamble of the United States Constitution, alienates him from the Common Law jurisdiction and his guaranteed inalienable rights. He is therefore made subject to statutory law pursuant to the Fourteenth Amendment to the United States Constitution, which may be construed to deprive him of his liberty, property, and pursuit of happiness.

Appellant feels that for this court to properly be appraised of the prevailing conditions of both law and fact related to the instant appeal, full briefs will be imperative.

CONCLUSION

Appellant has raised constitutional issues involving both State and Federal Constitutions as necessary to retain his quaranteed inalienable rights.

Appellant has been denied proper redress of grievance, as provided by the Common Law in the State of California. The remedies made available to appellant by the state require him to waive his guaranteed rights and to aquiesce and subject himself to a legislative tribunal. The State has used numerous compulsory methods to accomplish this end.

The constitutional issues raised in both the California Court of Appeal and the Supreme Court of the State of California demand judicial cognizance, which neither court has provided.

Therefore, appellant respectfully brings this appeal and requests that this Court docket the same and if

necessary to an understanding of the real issues of this appeal order the California Court of Appeal or the California Supreme Court, which ever is deemed appropriate by this Court, to issue an opinion on the constitutional issues herein presented.

Respectfully submitted,

JON G. LEAVELLE
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(805) 242-1595
Appellant in pro per

IN THE COURT OF APPEAL OF THE

STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION THREE

JON G. LEAVELLE, Petitioner,	B 029 879
v.	ORDER
CALIFORNIA FRANCHISE TAX BOARD, Respondent.	Court of Appeal- Second Dist. FILED Sep 23 1987 Robert N. Wilson- Clerk

THE COURT:

The petition for writ of mandate and other extraordinary relief, filed September 14, 1987, has been read and considered.

Judicial review of tax liability prior to payment is not available. (Jilllson v. Board of Supervisors (1963) 221 Cal. App. 2d 192, 196.) Because a taxpayer who objects to or seeks a reduction in the assessment of property has a plain, speedy and adequate remedy at law, mandate does not lie. (Id., at pp. 193-195.)

The petition is denied.

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* The court had incorrectly listed the Superior Court of the State of California for the County of Los Angeles as the Respondent and the California Franchise Tax Board as the Real Party in Interest.

They where notified that since the petition in question was an original proceeding in the Court of Appeal and since the cover of the petition read correctly when submitted the order heading should be corrected.

O R D E R D E N Y I N G R E V I E W

AFTER JUDGMENT BY THE COURT OF APPEAL

2nd District, Division 3, No. BO29879
SO02633

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

I N B A N K

JON G. LEAVELLE, Petitioner,

v.

CALIFORNIA FRANCHISE TAX BOARD, Respondent.*

Petition for review DENIED.

SUPREME COURT
F I L E D
NOV 10 1987
Laurence P. Gill,
Clerk
Deputy

(stamped) LUCAS

Cheif Justice

* The court incorrectly listed the Superior Court of the County of Los Angeles as the respondent and the California Franchise Tax Board as the Real Party in Interest.

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

JON G. LEAVELLE,
Appellant

v.

STATE OF CALIFORNIA,
Appellee.

On Appeal from the
Supreme Court of the State of California

NOTICE OF APPEAL

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(213) 736-2304 Attorney for Appellee

To: The Attorney General for the State of California, John Van De Kamp.

I

Jon G. Leavelle hereby gives Notice of Appeal from the order entered in this case (SO02633) on Nov. 10, 1987, by Chief Justice Lucas in the Supreme Court of the State of California, denying Petition for Review, without opinion, of the order of the California Court of Appeal filed Sept. 23, 1987 (B029879) denying the Petition for Writ of Mandate in question.

II

The adverse party to the appeal is the State of California.

III

The names, bar numbers, addresses, and telephone numbers of attorney's are:

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IV

I hereby certify that I served the Notice of Appeal on the 5th day of February, 1988, within the 90 days allowed by law, by sending a true copy thereof via certified mail, upon:

John Van de Kamp
Attorney General
3580 Wilshire Blvd.
Los Angeles, CA 90010

and on the same day a copy of this Notice of Appeal was filed, via certified mail, with the clerk of the California Court of Appeal wherein the judgment being appealed from was entered on Sept. 23, 1987.

V

This appeal is taken by authority of Article III section 2 of the United

to enforce this article by appropriate legislation." Thirteenth Amendment, United States Constitution

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.
Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or

hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United states, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." Fourteenth Amendment, United States Constitution

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seizures and searches shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized." Art. I sec. 19, California Constitution (1850)